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Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13

Summary

The present report is submitted pursuant to General Assembly resolution ES-10/13 of 21 October 2003, adopted at the resumed tenth emergency special session of the Assembly. In paragraph 1 of the resolution, the Assembly "demand[ed] that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law". In keeping with the request of the General Assembly in paragraph 1 of resolution ES-10/13, I have concluded that Israel is not in compliance with the Assembly's demand that it "stop and reverse the construction of the wall in the Occupied Palestinian Territory".

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A. Introduction

1. The present report is submitted pursuant to General Assembly resolution ES-10/13 of 21 October 2003, adopted at the resumed tenth emergency special session of the Assembly. In paragraph 1 of the resolution, the Assembly "demand[ed] that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law". In paragraph 3, the Assembly requested the Secretary-General to report periodically on compliance with the resolution, but with the first report on compliance with paragraph 1.

2. This report focuses on the period from 14 April 2002, when the Government of Israel first decided to build a system of fences, walls, ditches and barriers in the West Bank ("the Barrier"),* to 20 November 2003. It is primarily based on publicly available research carried out by United Nations offices on the ground. Other materials available to the United Nations, including those in the public domain, were used in the preparation of this report. The Government of Israel and the Palestinian Authority were consulted in the preparation of this report and asked to provide information they deemed relevant. Some of that information is attached in annexes I and II.

B. Compliance with resolution ES-10/13

3. Paragraph 1 of resolution ES-10/13 states that the United Nations General Assembly "demands that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of international law". Israel has not complied with that demand. It has not stopped or reversed the ongoing construction of the Barrier. This is shown by the following information from United Nations field monitoring:

- Ongoing construction in the occupied Palestinian territory, along the north-east boundary of the West Bank and east of Jerusalem
- Levelling of land for a section in the north-west of the West Bank
- Ongoing issuance of land requisition orders
- Release of the first official map showing the planned route of the Barrier and declaration of intent to complete it by 2005.

C. Route of the Barrier

1. Background to the construction of the Barrier

4. The Government of Israel has since 1996 considered plans to halt infiltration into Israel from the central and northern West Bank, with the first Cabinet approval of such a plan in July 2001. After a sharp rise in Palestinian terror attacks in the

* Palestinians often call this system the Separation Wall and Israelis use the term Security Fence. For the purposes of the present report, the more general term "the Barrier" is used.

spring of 2002, the Cabinet approved Government Decision 64/B on 14 April 2002, which called for construction of 80 kilometres of the Barrier in the three areas of the West Bank. The Seam Zone Administration, headed by the director general of the Israeli Ministry of Defence, was established to implement that decision.

5. On 23 June 2002, Israel's Cabinet Decision 2077 approved the first phase of a "continuous" Barrier in parts of the West Bank and Jerusalem. The decision stated that the Barrier "is a security measure" that "does not represent a political or other border". The route discussed was not made public; the decision stated that the "exact and final route of the fence will be decided by the prime minister and minister of defence". On 14 August 2002, the Cabinet approved the final route for Phase A construction, which ultimately included 123 kilometres in the northern West Bank and 19.5 kilometres around Jerusalem, almost entirely on land occupied by Israel in 1967.

2. The overall route

6. On 1 October 2003, after nearly a year of construction on various sections, the Israeli Cabinet approved a full Barrier route in Decision 883. Ministry of Defence documents say the planned route of the Barrier will form one continuous line stretching 720 kilometres along the West Bank. A map of the route, which shows both completed and planned sections, was posted on the Ministry of Defence web site on 23 October 2003, two days after the General Assembly approved resolution ES-10/13.

7. Much of the completed Barrier, excluding East Jerusalem, runs close to the Green Line, though within Palestinian territory. The completed Barrier deviates more than 7.5 kilometres from the Green Line in certain places to incorporate settlements, while encircling Palestinian population areas. The part of the Barrier that roughly hews to the Green Line is along the northernmost part of the West Bank. A 1-2 kilometre stretch west of Tulkarm appears to run on the Israeli side of the Green Line. The planned route, if fully constructed, would deviate up to 22 kilometres in places from the Green Line.

8. Based on the route on the official map, including depth barriers and East Jerusalem, approximately 975 square kilometres, or 16.6 per cent of the entire West Bank, will lie between the Barrier and the Green Line. This area is home to approximately 17,000 Palestinians in the West Bank and 220,000 in East Jerusalem. If the full route is completed, another 160,000 Palestinians will live in enclaves, areas where the Barrier almost completely encircles communities and tracts of land. The planned route incorporates nearly 320,000 settlers, including approximately 178,000 in occupied East Jerusalem.

3. Description of the Barrier

9. According to Israeli Ministry of Defence documents and field observation, the Barrier complex consists of the following main components: a fence with electronic sensors designed to alert Israeli military forces of infiltration attempts; a ditch (up to 4 metres deep); an asphalt two-lane patrol road; a trace road (a strip of sand smoothed to detect footprints) that runs parallel to the fence; and a stack of six coils of barbed wire marking the complex's perimeter. This complex has an average width of 50-70 metres, increasing to as much as 100 metres in some places.

10. Ministry of Defence documents say that "various observation systems are being installed along the fence". These apparently include cameras and watchtowers in some places where the Barrier consists of concrete walls. A planned allied component is "depth barriers", secondary barriers that loop out from the main Barrier to the east. Two depth barriers are part of the planned route in the central West Bank. Another three "depth barriers" in the northern West Bank that have appeared on some unofficial maps have not been built and are not part of the 23 October official map.

11. Concrete walls cover about 8.5 kilometres of the approximately 180 kilometres of the Barrier completed or under construction. These parts of the Barrier, which the Israel Defense Forces (IDF) terms "gunfire protection walls", are generally found where Palestinian population centres abut Israel, such as the towns of Qalqiliya and Tulkarm, and parts of Jerusalem. Some are currently under construction, while others were planned and built separately from the current project, such as part of the wall next to Qalqiliya, which was built in 1996 in conjunction with a highway project.

4. Phases of the route completed or under construction

12. *Phase A (excluding occupied East Jerusalem)*. This initial part of the Barrier, which runs 123 kilometres from the Salem checkpoint north of Jenin to the settlement of Elkana in the central West Bank, was declared completed 31 July 2003, although work continues in some parts. Much of Phase A construction deviates from the Green Line, and incorporates Israeli settlements. United Nations offices on the ground calculate that the Barrier has put approximately 56,000 Palestinians in enclaves, areas encircled by the Barrier that open into the West Bank. They include about 5,300 Palestinians in "closed areas" between the Barrier and the Green Line where Israel requires permits or identity cards for Palestinians who reside there or want to enter the area. The enclaves include the town of Qalqiliya (pop. 41,606) and, to its south, a cluster of three villages with about 7,300 residents.

13. *Phase B*. This section is planned to run 45 kilometres east from the Salem checkpoint along the northern part of the Green Line to the Jordan Valley, and is scheduled for completion in December 2003. It does not incorporate any settlements or create any Palestinian enclaves.

14. *Jerusalem*. The existing barrier and planned route around Jerusalem is beyond the Green Line and, in some cases, the eastern municipal boundary of Jerusalem as annexed by Israel. Completed sections include two parts totalling 19.5 kilometres that flank Jerusalem, and a 1.5-kilometre concrete wall in the eastern Jerusalem neighbourhood of Abu Dis. The planned route includes a section due east of Jerusalem that links up with the existing Abu Dis wall; levelling of land has started at its southern end. A second section runs through the northern Jerusalem suburb of Al-Ram, which will be cut off from Jerusalem, and links with the existing northern barrier section at the Qalandia checkpoint. A third section will surround five Palestinian communities north-west of Jerusalem, creating a 2,000-acre enclave with 14,500 people. A gap remains in the planned route due east of Jerusalem near the settlement of Maale Adumim.

5. **Planned phases of the route**

15. *Elkana to Ofer Camp*. This section links the north-western end of the Jerusalem Barrier with the southern point of Phase A construction at Elkana. It includes two "depth barriers" that together create enclaves encompassing around 29,000 acres and 72,000 Palestinians in 24 communities. The route deviates up to 22 kilometres from the Green Line to include several large settlements and approximately 52,000 settlers in the "Ariel salient". Cabinet Decision 883 of 1 October does not explain the nature of the Barrier around this area, where the Government of Israel has said it would build disconnected "horseshoes" around the settlements. However, the official map shows a planned route that seamlessly encompasses the settlement block.

16. *Southern West Bank*. According to the official map, this route of the Barrier in the southern West Bank runs 115 kilometres from the Har Gilo settlement near Jerusalem to the Carmel settlement near the Green Line south-east of Hebron. It cuts several kilometres into the West Bank to encompass the Gush Etzion settlement block and the settlement of Efrat, creating enclaves with around 17,000 Palestinians. Ministry of Defence documents say that construction on this stage, which has not started yet, is slated for completion in 2005.

6. **Process of land requisition as part of the Barrier's construction**

17. Land obtained for the building of the Barrier is requisitioned by military orders in the West Bank and by the Ministry of Defence in Jerusalem Municipality. The orders generally become effective on the date they are signed and are valid even if they are not personally served on the property owners. Most orders are valid until 31 December 2005 and can be renewed.

18. Orders are sometimes left on the property itself or served on the village council without personal service being given to the property owner. Landowners have one or two weeks from the date of signature to object to the relevant committee. The property owner can also petition the High Court of Israel. According to IDF, over 400 first-instance objections have been submitted and 15 petitions have been lodged with the High Court on behalf of families or entire villages.

7. **The establishment of closed areas**

19. On 2 October 2003, IDF issued a series of legal instruments ("the Orders") pertaining to land in the north-west part of the West Bank that lies between the Barrier and the Green Line ("Closed Area"). The Orders provide that "no person will enter the seam zone and no one will remain there" and will affect 73 square kilometres and approximately 5,300 Palestinians living in 15 communities.

20. The Orders introduce a new system of residency status. Only on issuance of a permit or ID card by IDF will residents of the Closed Area be able to remain and will others be granted access to it. Israeli citizens, Israeli permanent residents and those eligible to immigrate to Israel in accordance with the Law of Return can remain in or move freely to, from and within the Closed Area without a similar permit.

21. At the date of writing, most residents in the Closed Area had received permits although they were only generally valid for a period of one, three or six months. As

for those non-residents seeking access to the Closed Areas, indications are that a majority of those who need or want access to the Closed Area had not yet received permits.

22. Even with a permit or ID card, access and egress are regulated by the schedule of operation of the access gates, which is reportedly limited at present to openings of 15 minutes three times a day. However, if residents are denied regular access to their farmlands, jobs and services, a concern is raised that Palestinians may leave the area. In this connection, it should be noted that in the past, Israel has expropriated land for not being adequately cultivated, pursuant to military orders or through enforcement of domestic legislation in the West Bank inherited from the Ottoman and Jordanian regimes.

D. Humanitarian and socio-economic impact

23. The Barrier, in both completed and planned sections, appears likely to deepen the fragmentation of the West Bank created by the closure system Israel imposed after the outbreak of hostilities in September/October 2000. The main component of the closure system is a series of checkpoints and blockades that severely restrict the movement of Palestinian people and goods, causing serious socio-economic harm. Recent reports by the World Bank and the United Nations show that construction has dramatically increased such damage in communities along its route, primarily through the loss of, or severely limited access to, land, jobs and markets. According to the Palestinian Central Bureau of Statistics, so far the Barrier has separated 30 localities from health services, 22 from schools, 8 from primary water sources and 3 from electricity networks.

24. Palestinians living in enclaves are facing some of the harshest consequences of the Barrier's construction and route. For example, the Barrier surrounds the town of Qalqiliya, with the only exit and entry point controlled by an Israeli military checkpoint. This has isolated the town from almost all its agricultural land, while surrounding villages are separated from its markets and services. A United Nations hospital in the town has experienced a 40 per cent decrease in caseloads. Further north, the Barrier is currently creating an enclave around the town of Nazlat Issa, whose commercial areas have been destroyed through Israel's demolition of at least seven residences and 125 shops.

25. Completed sections of the Barrier have had a serious impact on agriculture in what is considered the "breadbasket" of the West Bank. In 2000, the three governorates of Jenin, Tulkarm and Qalqiliya produced US$ 220 million in agricultural output, or 45 per cent of total agricultural production in the West Bank. Palestinian cultivated land lying on the Barrier's route has been requisitioned and destroyed and tens of thousands of trees have been uprooted. Farmers separated from their land, and often also from their water sources, must cross the Barrier via the controlled gates. Recent harvests from many villages have perished due to the irregular opening times and the apparently arbitrary granting or denial of passage. According to a recent World Food Programme survey, this has increased food insecurity in the area, where there are 25,000 new recipients of food assistance as a direct consequence of the Barrier's construction.

26. The Barrier's route through Jerusalem will also severely restrict movement and access for tens of thousands of urban Palestinians. A concrete wall through the

neighbourhood of Abu Dis has already affected access to jobs and essential social services, notably schools and hospitals. The northern section of the Barrier has harmed long-standing commercial and social connections for tens of thousands of people, a phenomenon that will be repeated along much of the route through Jerusalem. The residences of some Jerusalem identity card holders are outside the Barrier, while those of some West Bank identity card holders are inside the Barrier. This raises concerns about the future status of residency for Palestinians in occupied East Jerusalem under current Israeli laws.

27. If Israel persists in its construction of the Barrier, some of its economic and humanitarian impact can be limited if Israel allows regular movement through a series of 41 gates to Palestinians living east of the Barrier who need to access their farms, jobs or services in the "Closed Area" to the west. Despite posted opening times, the gates are not open with any regularity. Moreover, such access cannot compensate for incomes lost from the Barrier's destruction of property, land and businesses. This raises concerns over violations of the rights of the Palestinians to work, health, education and an adequate standard of living.

E. Observations

28. **In keeping with the request of the General Assembly in resolution ES-10/13, I have concluded that Israel is not in compliance with the Assembly's demand that it "stop and reverse the construction of the wall in the Occupied Palestinian Territory".**

29. **Israel has repeatedly stated that the Barrier is a temporary measure. However, the scope of construction and the amount of occupied West Bank land that is either being requisitioned for its route or that will end up between the Barrier and the Green Line are of serious concern and have implications for the future. In the midst of the road map process, when each party should be making good-faith confidence-building gestures, the Barrier's construction in the West Bank cannot, in this regard, be seen as anything but a deeply counterproductive act. The placing of most of the structure on occupied Palestinian land could impair future negotiations.**

30. **I acknowledge and recognize Israel's right and duty to protect its people against terrorist attacks. However, that duty should not be carried out in a way that is in contradiction to international law, that could damage the longer-term prospects for peace by making the creation of an independent, viable and contiguous Palestinian State more difficult, or that increases suffering among the Palestinian people.**

31. **After so many years of bloodshed, dislocation and suffering, it should be clear to all of us, as well as to the parties, that only through a just, comprehensive and lasting peace settlement based on Security Council resolutions 242 (1967) and 338 (1973) can the security of both Palestinians and Israelis be assured. There is wide support in the international community for a two-State solution — Israel and Palestine living side by side in peace and security within secure and recognized borders, as called for by the Security Council in resolutions 1397 (2002) and 1515 (2003). That support must urgently be marshalled to assist the parties in achieving that end.**

Annex I

Summary legal position of the Government of Israel

1. Much of the information in this annex is derived from materials provided to the United Nations by the Government of Israel. Other information comes from publicly available sources.

2. Israel's Parliament has not incorporated the Hague Regulations into domestic legislation; however, Israeli authorities have relied on article 23 (g) of those Regulations, which permits the seizure of property if demanded by the necessities of war.

3. Despite having ratified the Fourth Geneva Convention, Israel has not incorporated it into its domestic legislation. Nor does it agree that the Convention is applicable to the occupied Palestinian territory, citing the lack of recognition of the territory as sovereign prior to its annexation by Jordan and Egypt and, therefore, not a territory of a High Contracting Party as required by the Convention.

4. Israel denies that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which it has signed, are applicable to the occupied Palestinian territory. It asserts that humanitarian law is the protection granted in a conflict situation such as the one in the West Bank and Gaza Strip, whereas human rights treaties were intended for the protection of citizens from their own Government in times of peace.

5. Regarding the route, the Government of Israel states that neither the "Green Line" nor the armistice line were confirmed as international boundaries in Security Council resolutions 242 (1967) and 338 (1973), which call upon the parties to negotiate. The legal status of the occupied Palestinian territory remains disputed.

6. According to its statement made before the General Assembly on 20 October 2003, the Government of Israel believes the construction of the Barrier is consistent with Article 51 of the Charter of the United Nations, its inherent right to self-defence and Security Council resolutions 1368 (2001) and 1373 (2001). Israeli officials say the Barrier has contributed to a significant decline in the number of attacks inside Israel. According to the Ministry of Foreign Affairs, between 1 April 2002 and 31 December 2002, 17 suicide bombers crossed into Israel from the central West Bank and killed 89 Israelis. Between 1 January 2003 and 5 November 2003, after part of the Barrier had been completed, eight suicide bombers entered Israel from the central West Bank and killed 51 Israelis.

7. The Government of Israel has asserted that land requisitions issued to enable the building of the Barrier are proportionate given the number of deaths and injuries sustained by Israeli citizens and are carried out in accordance with both international and local law.

8. The Government of Israel argues: there is no change in ownership of the land; compensation is available for use of the land, crop yield or damage to the land; residents can petition the Supreme Court to halt or alter construction and there is no change in resident status. It says that the completion of the Barrier will in fact, allow the Israel Defense Forces (IDF) to reduce its presence in the West Bank and remove roadblocks and checkpoints, thereby improving overall humanitarian conditions in the West Bank.

9. The Ministry of Foreign Affairs emphasized that the permit process for the Closed Area is still in its early stages and that Israel is "committed that residents and those that use the area will be able to live in and use the area with minimal interference".

10. As for access to the Closed Area by non-residents, the Ministry of Foreign Affairs has advised that permits, as opposed to ID Cards, will be issued based upon need. They explain that the activity of the individual will affect the nature of the permit; for example, a teacher would receive a permit for an entire school year and an olive farmer based on seasonal needs, and the health-care worker might have a permit for all occasions. While legal proof of ownership or residence would be best, it will not be necessary to receive official documentation proving ownership. Those wishing to visit friends and family would be permitted access subject to the security situation.

Annex II

Summary legal position of the Palestine Liberation Organization

1. The Palestine Liberation Organization legal opinion requested for this report cites several provisions and principles of international law as bearing on the question of the legality of the construction of the Barrier within the occupied Palestinian territory. Among them:

- Israel has a right to undertake certain limited measures in cases of strict military necessity and to protect its legitimate security interests. However, these measures must be taken in accordance with international human rights and humanitarian law.

- The measure of constructing the wall within the occupied Palestinian territory and related measures taken by the Government of Israel constitute violations of international humanitarian law because those measures are not justified by military necessity and violate the principle of proportionality. The harm those measures have caused include:

  - Extensive destruction of Palestinian homes and other property and appropriation of property not justified by military necessity, contrary to the Fourth Geneva Convention;

  - Infringements on the freedom of movement contrary to the International Covenant on Civil and Political Rights and in violation of the obligations of the Government of Israel under the Fourth Geneva Convention;

  - Infringements on the rights to education, work, an adequate standard of living and health care contrary to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights and in violation of the obligations of the Government of Israel pursuant to the Fourth Geneva Convention;

  - Violations of the prohibition against arbitrary interference of home contrary to the International Covenant on Economic, Social and Cultural Rights and the freedom to choose one's residence contrary to the International Covenant on Civil and Political Rights and in violation of the protections provided in the Fourth Geneva Convention as a result of the permit system established in the Closed Area.

2. This violation of these Palestinian rights, including facilitating the entry into and residency of Israeli civilians in the Closed Area while restricting Palestinian access to and residency in that Area, are causing long-term, permanent harm, including the transfer of Palestinians, contrary to the Fourth Geneva Convention and the International Covenant on Economic, Social and Cultural Rights.

- Because these Israeli measures are neither necessary nor proportionate, they give rise to criminal liability by the Government of Israel for violations of human rights and some prima facie grave breaches of the Fourth Geneva Convention.

- The requirement of proportionality can more likely be met by building the Barrier within Israeli territory or even on the Green Line and by evacuating the

Israeli civilian nationals currently residing in the Occupied West Bank contrary to international law.

- The construction of the Barrier is an attempt to annex the territory contrary to international law.
- The de facto annexation of land interferes with the territorial sovereignty and consequently with the right of the Palestinians to self-determination.